

CANADA / JUDGMENT

Dhillon v. Tennant

2025 BCSC 1281

COURT

Supreme Court of British Columbia

DECIDED

28 February 2025

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2025 BCSC 1281 Dhillon v. Tennant

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Dhillon v. Tennant,

2025 BCSC 1281

Date: 20250228

Docket: H250961

Registry: New Westminster

Between:

Parminder Kaur Dhillon, Jasmine Dhillon, Najwa Salameh,

and 1217487 BC Ltd.

Petitioners

And:

Richard Tennant, Mercedes Gloria Flores, Burnaby Blacktop Ltd.,

and John Doe

Respondents

Corrected Judgment: These reasons have been redacted for publication purposes on July 8, 2025.

Before: The Honourable Justice Lamb

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioners:

G. Richards

Counsel for the Purchasers, Samer Daibess and Oula Daibess:

M. Nied

Appearing on own behalf:

R. Tennant

Appearing on own behalf:

M.G. Flores

Place and Date of Hearing:

New Westminster, B.C.

February 27, 2025

Place and Date of Judgment:

New Westminster, B.C.

February 28, 2025

- [1] THE COURT: In this foreclosure action, the respondent Richard Tennant appears on his own behalf and on behalf of his wife, Mercedes Flores, seeking a stay of an order for vacant possession of a property located at [address redacted], Coquitlam, BC, made as part of an order for sale granted January 15, 2025, by Associate Judge Nielsen. Mr. Tennant and his wife currently reside at [address redacted] property.
- [2] When the order for sale application was heard, it was not made effective for ten days to allow Mr. Tennant to secure replacement financing that he thought was pending. When that financing fell through, Mr. Tennant filed an appeal of the Nielsen order on January 23, 2025. A number of chambers applications ensued, culminating in the hearing of the appeal by Justice Ball on February 19, 2025.
- [3] Justice Ball dismissed the appeal on the same day it was heard. Mr. Tennant says he intends to appeal the order of Justice Ball, and he seeks a stay of the order for vacant possession to March 10, 2025, or for 30 to 60 days or for six months according to the relief sought in the notice of application filed February 27, 2025, in this court.
- [4] The stay application is opposed by Samer Daibess and Oula Daibess, who purchased the property pursuant to the order for sale on February 10, 2025, unaware that Mr. Tennant and Ms. Flores had filed a notice of appeal. Counsel for the petitioners appeared at the stay application to oppose the stay.

- [5] I will briefly review the relevant background before explaining why I am not prepared to grant a stay in these circumstances. Throughout these reasons, I will refer to Mr. Tennant and Ms. Flores together as the "applicants" and Samer Daibess and Oula Daibess as the "purchasers."
- [6] This foreclosure proceeding relates to two lots: the first is an empty lot and the second at [address redacted], which is where the applicants' home is located. As I understand it, the applicants moved an 80-year-old house onto the [address redacted] property sometime after the two lots were created through a subdivision in 2022. The applicants were in the process of renovating the home, but they have not secured an occupancy permit.
- [7] Mr. Tennant identified various concerns about their dealings with the City of Coquitlam, but the City is not a party to these proceedings, and I have no jurisdiction to make any findings or comments about the City of Coquitlam in these proceedings.
- [8] This foreclosure proceeding was filed on September 22, 2023, initially against the empty lot at [address redacted] and then against both lots by amended petition filed October 20, 2023. The vacant lot at [address redacted] was sold pursuant to an order for sale made November 27, 2024. Unfortunately, the net proceeds from the sale of [address redacted] were not enough to discharge the petitioner's mortgage.
- [9] The application seeking an order for sale of [address redacted] proceeded on January 15, 2025, before Associate Judge Nielsen. In an affidavit made February 13, 2025, Mr. Tennant deposed that he did not oppose the application for approval of sale made that day. That said, at the hearing Mr. Tennant told Associate Judge Nielsen that he anticipated receiving a mortgage commitment later that day that would allow the applicants to pay the petitioners what they were owed. Mr. Tennant voiced his disagreement with the appraisal that was tendered in support of the sale approval application and the manner in which the property had been marketed, which was as an "as-is" property without an occupancy permit. Mr. Tennant told Associate Judge Nielsen that they did not have an occupancy permit because they were not able to do the final \$150,000 worth of work on the property because they lost their funding. Mr. Tennant told me the same thing on the stay application. I make no findings in that regard.
- [10] Basted on Mr. Tennant's representations about the pending replacement financing, Associate Judge Nielsen delayed the order for sale to be effective until January 23, 2025, to give the applicants a further opportunity to redeem the petitioner's mortgage. Otherwise, the completion date for sale of the property to the purchasers was set for February 10, 2025, and vacant possession was ordered by February 11, 2025.
- [11] Unfortunately, the mortgage commitment the applicants were counting on fell through. They were not able to secure replacement financing by January 22, 2025, and they filed a notice of appeal of the order for sale on January 23, 2025.

- [12] The purchasers were not made aware of the applicants' notice of appeal until after they had tendered funds on February 10, 2025. The conveyance of the property to the purchasers completed as scheduled on February 10, 2025.
- [13] Justice Ball heard the appeal of Associate Judge Nielsen's order on February 19, 2025. Counsel represented the applicants at the appeal and filed a supplementary statement of argument to supplement the statement of argument originally filed by the applicants.
- [14] On appeal, the applicants argued that the sale price for the property was incorrect based on the financing appraisal prepared on behalf of the applicants, which reflected the value of the property as if the house renovations were completed (which they are not) and other alleged inaccuracies about the description of the property that drew into question the realtor's efforts to market the property.
- [15] After hearing submissions, Justice Ball found there was no merit to the appeal and dismissed the appeal from the bench.
- [16] The applicants seek a stay of the order for vacant possession, ostensibly so they have time to pursue an appeal of Justice Ball's order to the Court of Appeal.

Analysis of the Stay Issue

- [17] The test set out *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, 1994 CanLII 117 (SCC), governs applications for stays pending appeal. The onus is on the applicants to show:
- 1) There is some merit to the appeal;
 - 2) The applicant will suffer irreparable harm if the stay should be refused; and,
 - 3) On balance, the inconvenience to the applicants if the stay should be refused would be greater than the inconvenience to the respondents (in this case the purchasers) if the stay should be granted.

See also *Tanguay v. Bridgewater Bank*, 2012 BCCA 234 (Chambers), at para. 16.

- [18] The over-arching focus is the interests of justice: *Coburn v. Nagra*, 2001 BCCA 607.
- [19] Regarding the merit of the anticipated appeal, Mr. Tennant acknowledges that he is not able to identify any error in Justice Ball's decision. He has not filed a notice of appeal, nor did he provide a draft notice of appeal on the stay application. Mr. Tennant was not able to identify any arguments or issues that were not raised before Justice Ball or that were not advanced in the supplementary statement of argument filed by counsel for the applicants.

- [20] Although Mr. Tennant raised various questions at the hearing of the stay application regarding some of the steps in the foreclosure proceedings and the transfer of the property to the purchasers, I am not able to discern in Mr. Tennant's submissions any viable ground of appeal. It is significant, in my view, that the applicants were represented by counsel at the appeal before Justice Ball.
- [21] Turning to the second factor on the test for a stay, irreparable harm "refers to the nature of the harm suffered rather than its magnitude": *RJR-MacDonald Inc.* at 341. Harm that cannot be quantified in monetary terms is irreparable: *Mason v. The Mansion House Estates Ltd.*, 2022 BCCA 452 (Chambers) at para. 20.
- [22] In terms of irreparable harm, Mr. Tennant acknowledged that he and his wife have secured an apartment to move into for March 1, 2025. There is no risk that they will be homeless, although I recognize they may face a challenge with respect to storing some of their personal belongings.
- [23] If the applicants are ultimately successful in their appeal, then in due course, if the sale of the property were set aside, either the pre-sale status quo would be re-established or damages would be awarded or both: *Resmor Trust Company v. Laus Holdings Ltd.*, 2011 BCCA 492 [Resmor], at para 22. In either case, the applicants would suffer no irreparable harm.
- [24] The final factor, the balance of convenience, requires weighing the interests of the parties and balancing the potential harm to each: *Mason* at para 21. The question is "which of the two parties will suffer the greater harm from the granting or refusal" of the stay pending appeal: *RJR-MacDonald Inc.*, at 342.
- [25] As in *Resmor*, this final factor is perhaps of greater significance in this matter. As in *Resmor*, the property under foreclosure was sold to a bona fide third-party purchaser for value. The purchasers, Samer Daibess and Oula Daibess, own the property. They are paying a mortgage with respect to the property. They arranged for utilities, and they obtained home insurance for the property.
- [26] Unlike in *Resmor*, the purchasers are before the court on this application, but their mortgage holder and their property insurer are not. A stay of the order for vacant possession would keep the purchasers out of property they own and would allow strangers to live in their house, strangers who have no contractual or tenancy or any other relationship with the purchasers.
- [27] The applicants seek a stay to March 10, 2025, or for up to 30 to 60 days or for six months according to their notice of application. A short stay cannot be justified on the basis that the applicants need time to find accommodation. They have a place available as of tomorrow, and they have an opportunity to move out before the petitioners could obtain and execute a writ of possession. A longer stay would only result in greater harm to the purchasers, all the while putting at risk the property the purchasers now own.

- [28] In weighing the balance of convenience, I am satisfied the potential harm to the purchasers of granting a stay exceeds the potential harm to the applicants of declining to order a stay based on the evidence before me on this application.
- [29] In summary, the applicants have failed to establish that it would be in the interests of justice to grant a stay of the order for vacant possession. The relief sought in paragraphs 1, 6, and 7 of part 1 of the notice of application filed February 26, 2025, is dismissed.
- [30] Are there any submissions with respect to costs?
- [SUBMISSIONS ON COSTS]
- [31] THE COURT: I have already made a ruling, sir, with respect to vacant possession, so the only question is costs.
- [32] I am satisfied based on the submissions that the successful parties are entitled to their costs. The petitioners shall have their costs at Scale A for this application, and the purchasers, Samer Daibess and Oula Daibess, will have their costs at Scale B. Those are my reasons. Thank you.

"Lamb J."

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